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ABSTRACT

The Tribally Controlled Community College Assistance Act of 1978, P.L. 95-471, was an attempt to provide resources to Indian tribes for establishing and improving tribal colleges. However, 2 1/2 years after enactment, approximately half of the eligible tribal institutions have received operating grants from the Act. This inability to provide resources has been a result of several factors, including the impoverished condition of the colleges, design flaws in the Act, and bureaucratic delays in the Bureau of Indian Affairs, the Office of Management and Budget, and the Department of Education. This article examines these three concerns, and analyzes how each has prevented fuller participation by tribal colleges in the Act. Each provision of the Act is examined against the three criteria (institutional characteristics, legislative provisions, bureaucratic implementation); the legislative history and hearing record are also examined to determine the extent to which the Act has fully complied with congressional intent. Finally, recommendations are made to improve the Act and its administration, for it is the complex eligibility and administrative procedures that, in the main, have caused the delay. (Author)

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THE TRIBALLY CONTROLLED COMMUNITY COLLEGE ASSISTANCE ACT OF 1978: THE FAILURE OF FEDERAL INDIAN HIGHER EDUCATION POLICY

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THE TRIBALLY CONTROLLED COMMUNITY COLLEGE ASSISTANCE ACT OF 1978: THE FAILURE OF FEDERAL INDIAN HIGHER EDUCATION POLICY

Monograph 82-1

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The Tribally Controlled Community College Assistance Act of 1978 (TCCCAA), P.L. 95-471, was an attempt to provide resources to Indian tribes for establishing and improving tribal colleges. However, two and one-half years after enactment, approximately half of the eligible tribal institutions have received operating grants from the Act. This inability to provide resources has been a result of several factors, including the impoverished condition of the colleges, design flaws in the Act, and bureaucratic delays in the Bureau of Indian Affairs, the Office of Management and Budget, and the Department of Education. This article examines these three concerns, and analyzes how each has prevented fuller participation by tribal colleges in the Act. Each provision of the Act is examined against the three criteria (institutional characteristics, legislative provisions, bureaucratic implementation); the legislative history and hearing record are also examined to determine the extent to which the Act has fully complied with congressional intent. Finally, recommendations are made to improve the Act and its administration, for it is the complex eligibility and administrative procedures that, in the main, have caused the delay.

The Condition of Indian Colleges

The historical development of higher education for Indians can be characterized as a record of majority dominance, paternalism, religious evangelism, and neglect. Although several prestigious colleges founded during colonial times (e.g., Harvard, Dartmouth,

Columbia) had missions that included instructing Indians, few Indians were educated in these institutions (Van Amringe, 1904; Rudolph, 1962). Indeed, the founder of Dartmouth perhaps typified the colleges' view of educating Indians when he said of one of his students, "I have taken much Pains to purge all the Indian out of him, but after all a little of it will sometimes appear" (Rudolph, 1962, p. 104).

Sheldon Jackson College was founded for Alaskan Natives in 1878 by the United Presbyterian Church. "Indian University" was founded by the American Baptist Church in Tahlequah, Creek Nation in February, 1880; it moved in 1885 to Muskogee (now Muskogee, Oklahoma) and became known as Bacone College. In 1887, North Carolina established a school for Indian students; it became a college in the 1930's and it offered its first degree in 1940; in 1969 it became Pembroke State University, which in 1978 still enrolled over 20% Indian students. No additional efforts were undertaken to establish Indian colleges until the 1960's. What federal efforts were aimed at assisting Indians to attend college consisted of establishing vocational schools (including Carlisle and Haskell high schools), providing boarding or reservation schools, arranging special contracts with mission schools or black institutions (e.g., Hampton Institute), and by funding scholarships for the few Indian college students to attend majority institutions (Chavers, 1974; Olivas, 1981). In 1966, BIA officials began to plan for a federally-sponsored Indian college, when studies were begun to extend Haskell Institute's high school program into a junior college, offering the first two

years of a college curriculum; this effort took four years, resulting in Haskell Indian Junior College becoming accredited in 1970. Other BIA-administered colleges include the Institute for American Indian Arts, which in 1968 became the postsecondary extension of the Santa Fe (NM) Indian School; and the Southwestern Polytechnic Institute, established in Albuquerque in 1973.

In addition to state-established and BIA colleges, and religious-affiliated colleges, another category of Indian colleges was established in 1968, when Navajo Nation began Navajo Community College. This has become the most common method of establishing Indian colleges, as more than a dozen tribes have established tribal colleges with Indian community boards of trustees. Although Navajo Community College was initiated as an independent tribal institution, smaller tribes began to establish a different type of institution: affiliating themselves with larger, accredited colleges, either as branch campuses or extension centers of majority institutions. In this manner, a public institution such as Oglala Sioux Community College evolved from its original affiliated status with Black Hills State College and the University of South Dakota into a preaccredited candidate for formal accreditation in its own capacity; Sinte Gleska College, a private institution, has also moved from its ties to Black Hills and the University of South Dakota to similar preaccredited status. The Lummi tribe has an arrangement with Whatcom Community College in Bellingham, Washington, to offer a degree in aquaculture (fishery management), with technical courses taught on Lummi Island, and the certificate awarded by the mainland campus. Through these creative means, Indians have begun to organize and administer tribal colleges and Indian institutions.

(Insert Table 1)
(See page 22a)

Drawing from several sources, a list of Indian institutions such as Table 1 would necessitate as many footnotes as entries: Pembroke State University, founded for Indians, today enrolls approximately 20% Indians; in this regard, Pembroke resembles three formerly-black, now predominantly-white, colleges -- Bluefield State College, Lincoln State University, and West Virginia State -- that are considered "traditionally black," with an asterisk (Turner and Michaels, 1978, p. 2). Sadly, the status of many of these institutions is uncertain, and the list is fluid; in particular the rural isolation, lack of property tax bases, and benign neglect by government have stunted the growth of Indian colleges.[1/]

P.L. 95-471

Vine Deloria has noted that congressional hearings and legislation on Indian issues often must wend their way through a protracted process, and even when legislation is enacted, it frequently does not remedy the problem (Deloria, 1978). The extent of poverty and illiteracy is so extraordinary that only comprehensive economic and education legislation can begin to reorganize or refocus federal and state programs to serve Indian communities. It was in recognition of the severe

problems facing Indians in higher education that Congress began to draft legislation for Indian colleges in 1975, when S. 2634 was introduced in the first session of the 94th Congress (6 November 1975). The legislative history encompasses several versions of the bill, which was signed into law on October 19, 1978, nearly three years after it had first been introduced (Appendix A).

One recognition of the special nature of these colleges was congressional intent to make grants for general operating expenses (Sec. 102). This type of grant, with its unrestricted nature, is unusual, for most federal higher education institutional grants are of the categorical or restricted nature, tied to narrow, specific program purposes. The only major postsecondary institutional grants program is Title III of the Higher Education Act, the Strengthening Developing Institutions program,[2/] a program that targets development resources implicitly at minority institutions, particularly black colleges (Morris, 1980; Olivas, 1981). Because Indian colleges are heavily reliant upon majority institutions, and because the Title III staff have repeatedly shown themselves to be insensitive to Indian concerns (Middleton, 1980; Chavers, 1981), Indian colleges receive a disproportionaltely small share of Title III funds. In the 1979 program, only 7 of the 25 awards to "Indian Programs" went to the Indian colleges listed in Table One; four of the majority institutions who received money are affiliated with the Table's Indian colleges, and these arrangements had Indian participation. As

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*Apart from "indirect cost" allowances, which are individually negotiated between institutions and agencies and can be spent for general operating purposes.

Indian testimony in the Title III reauthorization noted, however, the bulk of this money designed to strengthen Indian colleges is being administered by majority institutions (Nichols, 1979; Bad Wound, 1980). Thus, Congress had the Title III Indian experience in mind in making provisions for general grants, but with additional safeguards to ensure Indian control.

Definitions

These safeguards took the form of specific definitions and requirements for Indian control, provisions that were more narrowly targeted than any existing Indian education legislation. For example, recently published rules and regulations for the Indian Education Act defined an "Indian institution" as a "(postsecondary school) that -- (1) Is established for the education of Indians; (2) Is controlled by a governing board, the majority of which is Indian; and (3) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation."[3] Under the terms of the Tribally Controlled Community College Assistance Act, stricter definitions were drawn as only one sector of Indian colleges was targeted: tribally controlled community colleges, except Navajo Community College, which has its own federal legislation.[4] Any eligible college is required to be "formally controlled, or... formally sanctioned, or chartered, by the governing body of an Indian tribe or tribes, except that no more than one such institution shall be recognized with respect to any such tribe;" further, it "must be one which-- (1) is governed by a board of directors or board of trustees a majority of which

are Indians; (2) demonstrates adherence to stated goals, a philosophy, or a plan of operation which is directed to meet the needs of Indians; and (3) if in operation for more than a year, has students a majority of whom are Indians" (25 U.S.C. 1801; Sec. 103).

This requirement has had ironic consequences, for several colleges have altered their governance structure and have become tribal colleges, eligible for support under TCCCAA provisions. One such college was the College of Ganado, in Ganado, Arizona, on the Navajo reservation. Previously a private college affiliated with the United Presbyterian Church, the college has become a tribally-controlled community college of the Hopi Tribe, which resides within the reservation boundaries of Navajo Nation (Locke, 1978, p. 24). D-Q University, established as an Indian-Chicano college in Davis, California, is now chartered by the Hoopa Valley and Soboba tribes. In both instances, institutions with predominantly Indian student enrollments reconstituted themselves and secured tribal charters. In both instances, the rural isolation and college characteristics made such transformations possible and economical. This has been an unanticipated consequence of the Act, and tribal educators have predicted that several Indian or non-Indian colleges will alter their character to become eligible for Act funds. Congress should monitor this development closely to ensure that no "tribe shopping" occurs and that such reorganizations are genuine tribal initiatives in the best interest of the institutions and tribes. It should be recalled that many white institutions have taken "Indian program" initiatives to be eligible for Developing Institutions resources without altering their basic governance

structures, which rarely include Indians. Indeed, a 1976 survey of all two year college trustees noted that fewer than .2 of 1% were Indian (Grafe, 1976, pp. 4-5).

Another definition that has proven to have unanticipated consequences has been the definition, seemingly self-obvious, of "institution of higher education." The Act requires that eligible colleges be "institutions of higher education," in the commonly-understood and statutory meaning of the terms.[5/] However, as with other provisions of law, when applied to special populations-- in this case, Indian colleges-- the definition becomes less obvious, and may preclude the target population from being effectively served. P.L. 95-471 breaks down at this threshold point, for few tribally-controlled community colleges can meet the definitional tests of "institutions," notably in the requirements for accreditation status (see Table 1). In this case, Indian colleges find themselves in a classic Catch-22 situation: they are not eligible for Act money because they are not accredited, but they cannot secure accreditation without the development money and technical assistance promised in the Act.

Indian colleges, including tribal colleges, have found it difficult to negotiate the accreditation test of the "institution" definition, or to avail themselves of the statutory exceptions to the requirement. The first exception allows the Secretary of Education to waive the requirement if there is "satisfactory assurance" that the college is making progress towards accreditation; the second provision allows a college to secure three letters from accredited colleges indicating their willingness to

accept the unaccredited college's credits for transfer.[6/] However, no regulations have been promulgated by the Department to guide the Secretary in this regard, and in the face of larger political battles over accreditation, the Department has not chosen to interpret the colleges' status generously (Finkin, 1973; Kaplin, 1978). Nor have the unaccredited colleges employed the "3 letter" rule to trigger the other exemption provision. All that would be required is to enlist three accredited institutions in order to have credits accepted for transfer, but such waiver has not been widely utilized by the tribal colleges; it may be that senior institutions are reluctant to jeopardize their own status and risk accepting the credits.

One provision of the "institution" language that was successfully tailored to meet tribal needs is a specific TCCCAA exemption from clause (2) of the requirement that "institutions" be "legally authorized within such State."[7/] This is explicit recognition that tribes are independent governmental bodies, not subject to state licensing or governance authority. In sum, the definitions employed by Congress have had an uneven history of success in distinguishing Indian conditions from general postsecondary criteria, and in the important area of accreditation, the ostensibly-simple "institution" definition has proven to be a major design flaw.

Technical Assistance Contracts and Feasibility Studies

Congress, not willing to give money so easily to eligible tribal colleges, required that the Secretary of the Interior (to

whom the Bureau of Indian Affairs [BIA] reports) conduct "feasibility studies" to "determine whether there is justification to start and maintain a tribally controlled community college" (Sec. 105 b).[8/] The formats of these studies were designed by BIA staff and the Office for Management and Budget (OMB), and require completion of a feasibility study form 73 pages long, not including its required appendices. The "institution" definition has been strictly interpreted by OMB and the Bureau of Indian Affairs to require accreditation or candidacy as a measure of feasibility; the Bureau has added to the circularity of this requirement by noting that this criterion could be waived by the 3-letter rule --the accreditation waiver. Thus, the accreditation requirement has an added requirement of "feasibility", although accreditation standards are employed in determining feasibility. Unsuccessfully, Indian educators have argued that these dual requirements are redundant, and that a recognized accreditation status should be prima facie evidence of the college's feasibility (Clifford, 1980). BIA officials have conceded the difficulty in this dual proof, but have not devised a reduction in the paperwork required of the colleges.[9/]

(Insert Table 2)

As can be seen in Table 2, twenty tribal colleges have initiated feasibility studies, most of which have been conducted by Indian consultants under contract to the American Indian Higher Education Consortium (AIHEC), a Denver-based Indian technical assistance organization. Section 104 of the Act has an Indian preference provision: "In the awarding of contracts for techical assistance,

Table 2

PROCESS FOR FEASIBILITY STUDIES AND GRANT APPLICATIONS

School	(6-79/4-80) Feasibility Study Request	(3-2/) Feasibility Study	(3-2/ Review of Study	Determination (4/1-	FY 1980 Grant Application	FY 1980 Grant Determination (w/in OIEP)	FY 1980 Grant Awards	FY 1981 Grant Application	FY 1981 Review of Application	FY 1981 Grant Determination	FY 1981 Grant Award
Ojibwa CC	7/15/80	8/26/80	9/18/80	N 9/18/80	5/29/80	6/16/80	6/24/80	8/1/80	9(8-12)80	10/24/80	11/7/80
Nebraska Indian C.C.	12/4/79	3/9-15	4/9/80	P 5/1/80	3/28/80	4/30/80	5/20/80	7/3/80	9(15-20)80	10/24/80	10/31/80
Blackfeet C.C.	6/18/79	3/16-22	4/7/80	P 4/8/80	5/15/80			7/24/80	10(15-20)80	10/16/80	10/27/80
College of Ganado	9/27/79	3/2-8	3/27/80	P 4/8/80							
Cheyenne River C.C.	9/11/79	4/14-16	5/6/80	N 5/9/80							
Dull Knife Memorial C.C.	12/7/79	3/9-15	4/3/80	P 4/9/80		5/19/80	6/12/80	8/7/80	9(15-20)80	10/24/80	11/7/80
Fort Berthold C.C.	3/ /80	4/28-30	6/23/80	N 6/25/80							
Gila River C.C.	12/14/79	4/23-25	5/16/80	N 5/20/80							
Hehaka Sapa C. at DQU	12/19/79	3/9-15	4/7-6/12/80	P 6/12/80	5/01/80	6/12/80	6/19/80	8/6/80	9(15-20)80	12/11/80	12/18/80
Inupiat University of the Artic	4/21/80	5/19-21	6/20/80	P 6/26/80							
Little Hoop C.C.	2/18/80	4/14-16	5/6/80	P 5/9/80	5/25/80	6/12/80	6/27/80	8/5/80	9(15-20)80	9/16/80	11/7/80
Lummi School	1/24/80	3/23-25	4/9/80	N 4/16/80							
Salish Kootenai C.C.	1/10/80	3/16-22	5/1/80	P 5/1/80		5/19/80	6/10/80	7/29/80	9(15-20)80		11/28/80
Sinte Gleska College	9/17/79	3/2-8	4/4/80	P 4/9/80	3/18/80	4/30/80	5/23/80	8/1/80	9(8-12)80	10/29/80	10/30/80
Sisseton-Wahpeton College Center	12/6/79	4/28-30	5/22/80	N 6/4/80							
Standing Rock C.C.	1/3/80	3/16-22	4/9/80	P 4/16/80	3/28/80	4/30/80	5/20/80	8/7/80	9(8-12)80	10/16/80	11/7/80
Turtle Mountain C.C.	8/24/79	3/2-8	3/27/80	P 4/1/80	4/22/80	5/01/80	5/20/80	8/9/80	9(8-12)80	10/16/80	11/7/80
Oglala Sioux C.C.	7/31/79	3/9-16	4/4/80	P 4/9/80	4/02/80	5/19/80	6/10/80	8/8/80	9(8-12)80	10/16/80	10/30/80
Little Big Horn C.C.	3/3/80	4/28-30	6/5/80	N 6/23/80							
Fort Peck C.C.	5/13/80	6/19-21	6/30/80	N 7/7/80							

	Neg. Det. 30 days	Appeal Date	Hearing Date	Determination	2nd Feasibility Cycle: Feasibility Study Request	Feasibility Study	Review of Study	Determination
Lummi School of Aquat. and Fishing	4/28/80	6/05/80	7/15/80	N	9/17/80	1/81	1/23/81	P 2/2/81
Cheyenne River C.C.	5/19/80	6/26/80			10/10/80	Withdrew		
Gila River C.C.	6/20/80	7/27/80						
Sisseton-Wahpeton College Center	6/14/80	7/21/80			9/20/90	10/6/80	10/10-9/12	P 11/19/
Little Big Horn C.C.	6/30/80	8/07/80	8/28/80	N				
Fort Berthold C.C.	6/30/80	8/07/80			8/6/80	9/25/80	10/14/80	P 10/16/
Fort Peck C.C.	8/20/80	9/20/80	10/21/80			6/25/80	1/19/81	P 2/4/8

preference shall be given to an organization designated by the tribally controlled community college to be assisted." This arrangement, though unusual, is appropriate for colleges as unique and specialized as are Indian colleges. Therefore, regarding the feasibility studies, Congress and the administrators have been inconsistent: requiring extraordinarily high standards of eligibility and feasibility for Indian colleges, but allowing the colleges to approve their own technical assistance contractors. This curious ambivalence has been seen throughout the Act, giving with one hand and taking with the other.

The process that OMB and BIA have developed for feasibility studies is elaborate, requiring a request for the study; negotiation of a study team; conducting of a several-day site visit; report preparation; BIA review of the study; positive or negative feasibility determination by BIA; and eligibility for a grant application if the college is judged feasible. On the first attempt, seven colleges failed to win feasible status, and all filed appeals and requested additional review. The entire process, even with a positive initial review, can be time consuming, as Blackfeet Community College discovered. Filing a feasibility study request in June, 1979, they did not receive a determination until April 1980; it was not until June 6, 1980 that they received a grant award (Senate Hearing, 1980, p. 3).

This lag time, a chronic problem with many federal grants and contracts, is a particularly acute problem for Indian colleges. First, these colleges have practically no financial

reserves, no endowment funds, no ability to cultivate property tax bases or state resources, and no economies of scale to tide them over during the waiting periods. Second, this lack of financial reserve is exacerbated by the expenses of maintaining small institutions located in rural, isolated areas, where essential materials and supplies are not routinely available. For instance, a 1974 study undertaken by Navajo Community College found that building costs in Tsaile, Arizona were 30% higher than in Albuquerque, New Mexico (Senate Hearing, 1976, pp. 229-231); Alaskan costs would also be disproportionately higher for similar reasons of isolation and distance from suppliers. Finally, the schools have such small enrollments that the amount per FTE student, while seemingly high, is insufficient to enable the colleges that eventually do receive the money to establish programs and stabilize their operations, particularly capital plant needs. The Senate bill had proposed a flat grant of $125,000 and $5,850 per FTE student, but the final house version eliminated the grant provision and lowered the FTE award to $4,000.[10/]

The amount arrived at by the House committee exemplifies the curious way in which Indian legislation is drafted and the majority assumptions that usually prevail. The House report indicates that the per-FTE student amount was determined in order to approximate Haskell Indian Junior College FTE costs, judged to be $4,310 in 1977 (House Report, 1978, p. 10). This approximation was inappropriate for obvious reasons, including Haskell's already-completed plant, mature curriculum, large size, and federal investments since

1968 in the establishment of the College; newer institutions, reliant upon scarce tribal resources rather than federal start-up support, require more resources than Haskell did as its well-established high school was expanded into a junior college. Moreover, the Haskell approximation was itself adjusted downward from its actual $5,050 FTE appropriation, to take into account the less comprehensive nature of the tribal colleges,[11/] so the colleges actually would receive $1000 less per FTE student than does the well established Haskell. Finally, 1977 indices, unadjusted for 1981 appropriations, will strike these colleges particularly hard for cost reasons already noted.

A final provision under Section 105 is the authorization for the Secretary of Interior to pay for the feasibility studies. The Secretary can finance them through general departmental administrative funds or through dipping into a setaside of 10% of the TCCCAA grant funds; this provision would allow the feasibility studies to be financed by the funds intended to go to the institutions determined to be eligible. This provision is unusual not only because such administrative studies appear to be envisioned as required "technical assistance" under Section 104 and have a separate authorization (under Sec. 109 [a]2), but because the Bureau has a larger administrative trust responsibility to provide technical assistance to Indian tribes under the Indian Self-Determination and Education Assistance Act programs. The administrative cost and contract provisions of this Act spell out in considerable detail the Bureau's responsibility for providing technical assistance,

and there is no indication in this legislation or its regulations that funds for such activities are to come from Indian program funds.[12/] Although the delays in screening and certifying eligible institutions have meant that drawing from the program funds did not pose a threat in the first year (1979-80), the decline in appropriations and increase in program outlays have already threatened institutional entitlements.

Effect Upon Other Programs

In order to preclude federal agencies from playing a shell game with Indian funds by substituting TCCCAA money for other funds for which tribal colleges were eligible, Congress enacted Section 108, a prohibition on such a practice ("eligibility for assistance under this title shall not, by itself, preclude the eligibility of any tribally controlled college to receive Federal financial assistance" from other federal programs). This section was added to ensure that the TCCCAA entitlement funds would supplement and not supplant resources received by the colleges (Senate Report, 1977, p. 10; House Report, 1978, p. 16). Congress had reason to fear that agencies would attempt to supplant funds, both formally and informally.

Indian educators had noted the decline in Title III funds to Indian programs (Nichols, 1979; Factbook, 1978, pp. 88-90), and were concerned that the Title III staff would view TCCCAA funds as an opportunity to reduce Indian resources even further. Congressional

hearings and testimony from Title III administrators gave additional evidence that such a tradeoff might occur, for the officials testified against the bill and urged instead that the resources be added to the Title III program for its categorical awards to developing institutions (House Hearings, 1978, pp. 144-150). Congress was justifiably skeptical of the program's claim that more money given to it would meet the long term stabilization needs of Indian colleges, when only seven tribal colleges received such competitive awards for the 1979 fiscal year (Olivas, 1981).

A more formal shell game is evident in the BIA's method of "band-analysis," a fiscal mechanism for funding tribal social programs. This mechanism, itself an antiquated and inefficient appropriations device, has been employed by the BIA to supplant tribal higher education funds in anticipation that tribes will receive TCCCAA funds -- a practice that appears to be prohibited both by Section 108's provisions and by congressional intent. The band analysis method is a budget process in which a tribe submits a budget request and the BIA approves certain tribal expenditures; each categorical entry (housing, health, elementary education, higher education) approved is a "band," or percentage of the final annual BIA appropriation to the tribe. Because tribal administrators are subject to BIA internal budget politics (including antagonism towards non-BIA Indian institutions) and delays, the tribes themselves cannot plan in advance, and have no flexibility to rearrange budget expenditures among the "bands." Thus, tribal colleges who do seek to stabilize their BIA funding must trade off

among other categories; in fact, Navajo Community College sought and received legislative exemption[13/] to remove its appropriations from the band analysis method. The Senate Report noted, "It can be stated fairly certainly that the funding provided by the Bureau to these colleges is inadequate and unstable due to the nature of the band analysis process itself" (Senate Report, 1977, p. 6).

Although Congress specifically directed that band funds not be diminished in anticipation of TCCCAA, this is exactly what has happened. In the case of Navajo Community College, as noted, separate legislation was enacted to negotiate the situation, but not until several years of such BIA tradeoffs had elapsed, seriously jeopardizing the development of the first tribal college.[14/] For other tribal colleges on the band analysis, the situation has been equally serious, with no individual institututional legislative relief. For example, band money for Sinte Gleska, Oglala Sioux, and Turtle Mountain Community Colleges was removed when the three colleges were found to be feasible for TCCCAA eligibility. Only in May, 1980, the end of the 1979-80 school year, did BIA rescind its action; not until 1981-82 did BIA supplement the TCCCAA fund request and comply with the no-penalty provisions of the law.[15/]

Other Fiscal Considerations

Sections 109 and 110 include authorization language for appropriations, including a separate provision, noted earlier, for technical assistance. Anticipating that no schools would be found

feasible or eligible, Congress did not authorize any funds to be appropriated until fiscal year 1979 (October 1, 1979).[16/] Congress also constructed an elaborate scheme for pro-rata increases or decreases in the FTE formula, contingent upon appropriations levels. However, there are internal inconsistencies and conflicting directions within these provisions and other TCCCAA sections.

The grant adjustments, for instance, appear to allow more than the $4,000 per FTE allotment: "Sums appropriated in excess of the amount necessary to pay in full such total eligible amounts shall be allocated by ratably increasing such total eligible amounts" (Sec. 110a) [emphasis added]. Yet Section 110(b) takes a different tack, stipulating "no grant recipient shall receive, as a result of such reallocation, more than the amount provided for under section 106(a) of this title." The regulations promulgated by BIA for the administration of these disbursements do not entirely clarify the rollback provisions:

> If with respect to any academic year the amounts of financial assistance hereunder have been ratably reduced as provided in subsection (d)(3) of this section and additional funds have not been appropriated to pay the full amount of such reductions on or before June 1st. of such year, the Director of Education shall notify each Community College of such fact in writing and each Community College shall report in writing to the Director of Education on or before July 1st. of such year the amount of unused portion of received funds. The total of such reported unused portions of received funds shall be reallocated by the Director of Education in proportion to the amount of financial assistance to which each Community College is entitled under subsection (d) but which has not been provided due to the ratable reductions provided for therein, (except that no Community College shall receive more than the total annual cost of the education programs provided by such College)

and payments shall be made reflecting such reallocations on or before August 1st. of such academic year. (25 CFR 32 b. 8 f)

As with the band analysis, it will be difficult for tribes to plan budgets and commit themselves to expenditures when complex and contradictory regulations prevail. Although the TCCCAA was enacted to provide a stable flow of resources to these colleges, the band analysis, rollback provisions, and pro-rata negotiation terms do not allow such stability; in the first year of funding, the colleges received $3421 per FTE student, almost $600 less per FTE than the law mandates. As noted in Table 3, the BIA is only requesting $6,157,000 for Fiscal Year 1982 -- $3,444 per FTE. Therefore, in the first year, the colleges received less than their full share, and the BIA budget request for the second year asks for less than full share.[17/] Moreover, the special legislation secured by Navajo Community College guaranteed the full $4000 for each FTE NCC student, restricting the amount of money available to the other tribal colleges. The BIA has acknowledged that such a budgeting procedure is unfair to the remaining colleges, but has not requested separate appropriations that would enable them to budget separately -- even though the law appears to require such separate line items.[18/]

(Insert Table 3)

Additionally, the small size of the colleges and high Indian student attrition combine to make it difficult to plan and stabilize college programs under the TCCCAA formulae. The FTE

Table 3

TCCCAA APPROPRIATIONS

College	FY 1980 FTE	FY 1980 Grant	Estimate FY 1981 FTE	Estimate FY 1981 Grant	Estimate FY 1982 FTE	Estimate FY 1982 Grant
Standing Rock	111	$354,078	85	$290,985	120	$413,221
Blackfeet	83	264,761	199	680,779	199	685,259
Sinte Gleska	73	551,851	173	591,833	187	643,937
Turtle Mountain	107	341,318	107	366,047	128	440,769
Salish-Kootenai	90	287,079	125	427,625	125	430,439
*Ganado	131	156,287	82	280,522	82	282,368
Little Hoop	35	111,646	42	143,682	46	158,402
Sisseton-Wahpeton	-	-	66	225,786	66	227,272
D.Q. University	76	242,431	82	280,522	82	282,368
Ft. Berthold	-	-	38	129,998	38	130,853
Dull Knife	93	296,709	93	318,153	93	320,247
Oglala Sioux	282	833,703	214	732,094	214	736,911
Nebraska	109	329,453	106	362,974	118	406,335
Lummi Sch. Aqua. 1/					70	241,046
Little Big Horn 1/					110	378,786
Ft. Peck 1/					50	172,176
Cheyenne River 1/					60	206,611
Subtotal	1,290	$3,769,356 + 231,000*				
Title I		4,000,356	1,412	4,831,000	1,788	6,157,000
Navajo Community College 2/	1,600	6,405,000	793	3,172,000	793	3,172,000
Sinte Gleska 3/		358,300		136,500		136,500
Oglala Sioux 3/		117,180		133,000		133,000
Turtle Mountain 3/		93,700		80,500		80,500
Ganado 3/		506,000				
Subtotal-Title II and Snyder Act		7,480,180		3,522,000		3,522,000
Feasibility Studies		400,000		50,000		-
Technical Assistance		600,000		600,000		600,000
Total Estimate	2,890	12,249,536*	2,205	$9,003,000	2,581	$10,279,000

1/ Represents colleges which are expected to be declared feasible in FY 1982.
2/ Funds provided under Title II of P.L. 95-471.
3/ Supplemental funds under the Snyder Act in addition to funds made available under Title I above.

* Ganado received on emergency grant of 231,000 in 1980 which is not included in the budget figures.

Sources: 1981 and 1982 figures are from BIA actual requests
1980 awards are from BIA Office of Indian Education
1980 Navajo FTE is taken from Higher Education Daily, April 29, 1980, p.5

determination has been spelled out in the regulations (25 CFR 32b.8d 1), and employs a formula designed to account for attrition during the year:

$$\frac{\$4000 \times \text{FTE}_{\text{Term 1}} + \text{FTE}_{\text{Term 2}} + \ldots \text{FTE}_{\text{Term N}}}{N}$$

(Indian FTE = FT + PTCR/12)

where FT = full time Indian students carrying 12 or more credit hours at the end of the sixth week of the academic term,

PTCR = number of credit hours for which part-time Indian students are registered at the end of the sixth week of an academic term (25 CFR 32b. 3g).

While attrition at large colleges is a major problem for institutional planners, the tribal college enrollments are so small that even small attrition rates make a significant difference in their TCCCAA entitlement. The sixth-week determination for the first-term formula poses planning problems, as resources to be used for retaining students (counseling, financial aid administration, academic advising) have been delayed. In this sense, the delays in the funding have directly contributed to the attrition, which in turn has led to reduced FTE funding (Clifford, 1980).

Reporting Requirements

The TCCCAA mandated four reports or studies as well as the required rules and regulations. As with other provisions of this

law, BIA has a poor record in meeting these requirements. The reports on facilities mandated under sections 111 and 112 were not completed by the deadline dates (January 17, 1979 and November 1, 1979), but were made available in late summer, 1980. Section 106 (e) requires the Secretary of Interior to report annually to Congress on the status and needs of the tribal colleges; in the three years since the law was enacted, no report has been made. Of course, the delays in administering feasibility studies made such a report difficult, and any candid report would have surely reflected badly upon BIA and OMB. However, an important component of the mandate was the Secretary's "recommendations for needed action," which could have touched upon design flaws and acknowledged difficulties such as BIA officials were conceding elsewhere in congressional testimony. Finally, under section 107(c)2, the Secretary is to collaborate with the National Center for Education Statistics in order to establish a fiscal data collection system: this system has not been established, even through the feasibility studies have been available to provide baseline data. Although BIA estimates indicate that the $4000 allocations may be too low, they requested less than that amount for 1982, without the required fiscal data system.[19/] In sum, reporting requirements have not been met, even in fundamental data categories crucial for planning activities and appropriations.

Miscellaneous Provisions

Section 113 precludes participation by Navajo Community College in the TCCCAA, owing to the prior legislation enacted for NCC,

reconstituted as Title II of the TCCCAA, the Navajo Community College Assistance Act of 1978 (25 USC 640a). Additional provisions include specific anti-discrimination language, prohibiting recipient colleges from denying admission to non-tribal Indians, and general provisions for repayment of funds by institutions violating this policy. Although the legislative history and hearing record do not suggest why such a provision was deemed necessary, discussion with congressional staff noted that some acrimony had been evident between AIHEC institutional members and other Indian educators, and that this provision was in response to such disagreements.[20/]

The provisions for promulgating rules and regulations were not unusual, and ordered the requisite posting of proposed rulemaking and final rules within ten months. The Department was only slightly behind schedule in this process, with final regulations published in the November 21, 1979 Federal Register.[21/] Department officials were also required to meet with national Indian organizations, a requirement met by BIA's convening of a task force of Indian educators (Senate Hearing, 1980, pp. 3-4).

Proposed Amendments to PL 95-471

An amendment to the Act (S. 1855) was passed by the Senate on January 25, 1980 and referred to the House Committee on Education and Labor on January 29; it was referred to the Subcommittee on Postsecondary Education, where it remained until the Congress adjourned for the year.[22/] The amendment clarifies the Indian

eligibility requirement but, curiously, it further complicates the accreditation issue, for it restores portions of the redundant accreditation waiver provisions incorporated in the statutory definition of "institution of higher education," and gives the Secretary of the Interior (not the Secretary of Education) the authority to determine reasonableness of the colleges' efforts toward accreditation. This provision, if it were to be adopted, would further complicate the accreditation provisions, for a memorandum of agreement would have to be drafted between Interior and Education to utilize the eligibility staff of the Department of Education, adding yet another layer of administration. A more reasonable legislative approach would employ the Act's present language and adopt accreditation or its waivers as evidence of feasibility for existing colleges.[23/] The amendment also increases authorization levels for technical assistance, and clarifies an ambiguity in the law (Sec. 104) that could have been construed to allow only accredited colleges to be eligible for the assistance; this clarification remains necessary, but BIA's corollary mandates to provide such services could be employed without altering the legislation.

The Subcommittee on Postsecondary Education, to whom the Senate amendments were sent, never scheduled hearings or took action on S. 1855. Almost two years later, when the 96th Congress ended, the amendments died. Discussions with congressional staff indicated that the inattention was due to pressing work on the legislation establishing the Department of Education and reauthorizing

Table 1

INDIAN COLLEGES

22a

College [Affiliated Institution] (State)	Public/ Private 2 yr/4yr	1979 Accred. Status	BIA/ Tribal Affiliation
Bacone College (OK)	Priv, 2	1	-
Blackfeet Community College (MT) [Flathead Valley CC]	Publ, 2	4	Blackfeet
Cheyenne River Community College (SD) [Northern State C]	Publ, 2	4	Cheyenne River Sioux
College of Ganado (AZ)	Priv, 2	1	Hopi
Dull Knife Memorial College (MT) [Miles C]	Publ, 2	4	Northern Cheyenne
Flaming Rainbow University (OK)	Priv, 2	4**	-
Fort Berthold College Center (ND) [Mary C]	Priv, 2	4	Mandan, Hidatsa, Arikara
Fort Peck Community College (MT)	Publ, 2	4	Assiniboine and Sioux
Haskell Indian Junior College (KS)	Publ, 2	1	BIA
Hehaka Sapa College at D-Q University (CA)	Priv, 2	1	Hoopa Valley, Soboba
Institute of American Indian Arts (NM)	Publ, 2	2	BIA
Inupiat University (AK)	Priv, 4	2	Inupiaq Eskimo
Little Bighorn Community College (MT) [Miles C]	Publ, 2	4	Crow
Little Hoop Community College (ND) [Lake Region JC]	Publ, 2	4	Devil's Lake Sioux
Lummi School of Aquaculture (WA) [Whatcom CC]	Publ, 2	3	Lummi
Native American Educational Services (IL)	Priv, 4	2	-
Navajo Community College (AZ)	Publ, 2	1	Navajo
Navajo Community College Branch (NM) [Navajo CC]	Publ, 2	3	
Nebraska Indian Community College (NE) [Northeast Technical C]	Publ, 2	4	Santee Sioux, Omaha, Winnebago
Nebraska Indian Satellite Community College (NE) [Nebraska Indian CC]	Publ, 2	3	
Oglala Sioux Community College (SD)	Publ, 2	4**	Oglala Sioux
*Pembroke State University (NC)	Publ, 4	1	-
Salish-Kootenai Community College (MT) [Flathead Valley CC]	Publ, 2	4	Salish, Kootenai
Sheldon Jackson College (AK)	Priv, 4	1	-
Sinte Gleska College (SD)	Priv, 4	2	Rosebud Sioux
Sisseton-Wahpeton Community College (SD)	Publ, 4	4	Sisseton-Wahpeton Sioux
Southwestern Indian Polytechnic Institute (NM)	Publ, 2	1	BIA
Standing Rock Community College (ND)	Priv, 2	2	Standing Rock Sioux
Turtle Mountain Community College (ND) [North Dakota State U at Bottineau]	Publ, 2	2	Turtle Mountain Chippewa

* Formerly Pembroke State College for Indians.

** Not listed in Accredited Postsecondary Institutions (September 1, 1979), but listed as having preaccredited status in Education Directory (May, 1980).

Accreditation Key:
1) Accredited
2) Preaccredited
3) Branch or extension campus
4) Unaccredited

the Higher Education Act; Indian educators, understandably more cynical, accuse the Congress of continued insensitivity toward Indian education.

Conclusions, Recommendations

It may have been a blessing in disguise that the House failed to act upon the Senate's amendments, for the changes failed to remedy the major design flaws in the TCCCAA, and such minor fine-tuning might have dissuaded Congress from taking any further comprehensive action to make the Act more responsive to the colleges' difficulties. The delays over the Act's first three years have meant that the institutions have lost valuable time in stabilizing their programs, and most of the colleges are financially even more precarious than they were at the time Congress was moved to legislative action. In one respect, the status of the colleges recently declared feasible may render moot many of the eligibility concerns; however, the uncertainty of the ineligible colleges' status, and the inadequacy of the financial provisions reveal major design problems that still remain. Moreover, major provisions of the TCCCAA remain unfulfilled, and interagency cooperation remains an elusive goal. In each case of delay, reasonable administrative provisions could have been employed to resolve the problem. Unfortunately, the TCCCAA is, in many respects, all-too-typical an example of an Indian law administered against the best interests of its intended recipients.

The legislation will be reconsidered in 1982, as funds are authorized only through fiscal year 1981 (Sec. 109a 1). Therefore, those design flaws acknowledged by BIA and tribes can be addressed in further hearings; in particular, the feasibility of tribal colleges that remain ineligible can be examined. Financing provisions require considerable revision, not only because the colleges have never received their full share, but because BIA has not even requested the full share in the appropriations process. Even technical assistance, a BIA responsibility under TCCCAA and other Indian legislation, has been inadequate; indeed, the Bureau testified against increased technical assistance to the colleges.[24/] That the Act could provide too much money for technical assistance to these fledgling colleges seems a ludicrous claim, given the history of delays and neglect.

The delays have been due, in large part, to inter-agency disagreements and lack of coordination among the three lead offices: BIA, OMB, and the Department of Education. For example, OMB has been inflexible in its review of feasibility criteria, and has been unwilling to consider these colleges' characteristics as deserving special attention. Many Indian educators have blamed BIA for its lukewarm support of the TCCCAA, while others blame the new Department of Education for its footdragging.[25/] Both criticisms are accurate, for the BIA was not required to use accreditation as a feasibility criterion, and the Department of Education could have been more flexible in interpreting the colleges' progress toward accreditation. Indeed, the Department, in the absence of regulations

governing accreditation, could have employed the discretion accorded it in Title III, where accreditation requirements for Developing Institutions eligibility can be waived in special circumstances where Indian and Spanish speaking students will be served.[26/] In either case, the bureaucratic delays have frustrated the legislative attempts to create and enhance these Indian colleges.

The colleges, pressed for their survival, have not been able to convince Congress or the agencies that changes are necessary. AIHEC's recommendations have included clarification of definitions ("Indian," "institution," and "FTE"), acceptance of accreditation status as evidence of feasibility, restoration of tribal college band-analysis funds reallocated by BIA, incorporation of forward-funding provisions, and stabilization of funding patterns (Clifford, 1980). While these recommendations would surely improve the law and regulations, several problem areas remain. It is essential that BIA and NCES develop their required fiscal data-gathering system so that exact costs and an inflation index can be determined; once the costs are determined, more stable funding provisions will be possible. Congress surely cannot have intended for the funds to be as irregular and imprecise as they have been, the rollback provisions notwithstanding. Congress will also need to clarify the technical assistance provisions and to determine whether program funds should be used for technical assistance when corollary Indian legislation (e.g., the Indian Self Determination Act) already requires BIA assistance to tribes. At the least, Congress should fully fund the program so that the dollars per FTE are

available; additionally, BIA should request full funding rather than ask for less money than is required to serve the eligible students. BIA should also seek the money necessary to build the facilities acknowledged to be necessary for the colleges.

There has been no coordination of administrative efforts to improve the situation for the tribal colleges, and BIA, the lead agency, has not been effective in pressing OMB and the Department of Education for streamlining procedures. Although some of the colleges have negotiated the complex TCCCAA procedures, several have not been declared feasible. BIA and the Department of Education should concentrate upon these colleges and upon the new institutions established by tribes. Moreover, the Department of Interior should take seriously its required annual report. It is unclear why Congress has not pressed for this mandated study, when design flaws and bureaucratic delays have been so obvious, especially in BIA's supplanting of band funds. If Congress is serious about developing tribal colleges and Indian self determination, it would consider the provisions of TCCCAA that have proven troublesome and would fully fund the program. If Interior and BIA took their trust responsibilities more seriously, they would not have administered the Act as slowly and badly as they have. After nearly three years, it is not clear to observers whether tribal colleges will survive the legislation enacted and administered on their behalf.

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FOOTNOTES

1. Table One could have included several more institutions, but adequate information was not available: Tanana Land Claims College, Ojibwa College, United Tribes Educational Technical Center, Gila River Community College.

2. 20 U.S.C. 1051-1056.

3. 86 Stat. 334 (as amended); the regulations will be recodified under 34 C.F.R., replacing the 45 C.F.R. regulations. See Federal Register, 21 May 1980, p. 34153; 20 U.S.C. 241 (a)(a).

4. Navajo Community College Assistance Act of 1978, 25 U.S.C. 640 (a); Amendments to the Navajo Community College Act [sic], Education Amendments of 1980, Title IXV, Part F, Sec. 1451.

5. 25 U.S.C. 1801; 20 U.S.C. 1141.

6. Higher Education Act of 1965, Title XII, Sec. 1201 (a)(5); 20 U.S.C. 1141. Anticipating that the unaccredited status of most Indian colleges would cause eligibility problems, the drafters of the original Tribally Controlled Community College Act bill (which had been proposed as an amendment to the Indian Self Determination Act) had incorporated the two exceptions into the bill. The legislation that emerged, however, simply incorporated the definition language, eliminating the redundant exemption references.

7. 25 U.S.C. 1801.

8. The Senate bill had no such requirement. Senate Report, 1977, Sec. 105d.

9. 25 C.F.R. 32b. See Federal Register, 21 November 1979, pp. 67040-67048. See also the testimony of E. Barlow, BIA, in Senate Hearing, 1980, pp. 6-7.

10. Compare Senate Report, 1977, pp. 3, 10 to House Report, 1978, pp. 10, 16. See Sec. 107 (25 U.S.C. 1808).

11. House Report, 1978, pp. 9-10. Although the Report refers to "more conclusive" services, the context suggests "comprehensive" was intended.

12. 25 U.S.C. 450f; 25 C.F.R. 271.

13. House Hearing, 1977; Education Amendments of 1980, Title XIV, Part F, Sec. 1451; House Conference Report, 1980, p. 209.

14. House Conference Report, 1980, pp. 205-206; House Report, 1978, p. 17; Senate Report, 1977, p. 7; Senate Hearing, 1980, p. 60.

15. Badwound, 1980, pp. 18-31. This testimony also includes a letter from the Department of Interior clarifying the Department's error (p. 32).

16. See Table 3.

17. And as noted earlier, these figures were based upon low rough estimates of Haskell's costs.

18. See BIA testimony, Senate Hearing, 1980, pp. 1-9. Additionally no indirect costs are allowed in this formula, which makes it difficult for tribes to establish an indirect cost rate for doing business with other government agencies. See Senate Hearing, 1980. p. 18.

19. BIA testimony, Senate Hearing, pp. 5-6. In a January 1981 letter to the author, the Assistant Secretary for Education Research and Improvement (to whom NECES reports) indicated that the system was ready for collecting the required data.

20. Of course, majority institutions are never required to abide by such prohibitions. For an example of the type of acrimony to which the Congress may have had in mind, see the letter from the College of Ganado, Senate Hearing, 1980, p. 70.

21. Federal Register, 21 November 1979, 67040-67048.

22. Senate Calendar, 24 September 1980, p. 199.

23. Congressional staffers have suggested that this reassignment was in anticipation of Higher Education Act reauthorization changes in Sec. 1201. These changes were not made in the final version of 1201.

24. "If all 21 [colleges] were to participate in $10 million worth of technical assistance funds, each college would average approximately $476,000 in [such] funds per year, an amount far in excess of that which can be utilized effectively." Letter from Forrest Gerard, Assistant Secretary, Department of the Interior, to Senator John Melcher, 21 November 1979, Senate Report, 1979, p. 5.

25. Middleton, 1980, pp. 1, 12; Senate Hearing, 1980; Higher Education Daily, 12 June 1980, pp. 5-6.

26. Higher Education Act, Title III, Sec. 302 (a)(2). The newly-reauthorized Education Amendments of 1980 have widened the waivers to include rural students, low-income individuals, and black students. Title III, Part D, Sec. 342 (b)(1-5); House Conference Report, 1980, p. 164.

APPENDIX A. LEGISLATIVE HISTORY OF TRIBALLY CONTROLLED COMMUNITY COLLEGE ASISTANCE ACT OF 1980

- 6 November 1975: S. 2634 introduced by Senators Abourezk and McGovern.
- 15 March 1976: Hearing before the Senate Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs (Senate Hearing, 1976).
- 29 September 1976: S. 2634 redrafted, submitted as S. 3850.
- 21 February 1977: S. 3850 redrafted, submitted as S. 1215 by Senators Abourezk, Burdick, Gravel, DeConcini, Jackson.
- 28 July 1977: Hearing before the Senate Select Committee on Indian Affairs (Senate Hearing, 1977)
- 16 September 1977: H.R. 9158 introduced by Representatives Blouin and Quie.
- 13 October 1977: Hearing before the House Subcommittee on Postsecondary Education of the Committee on Education and Labor (House Hearing, 1977).
- 1 November 1977: Senate Report on S. 1215 (Senate Report, 1977).
- 4 November 1977: Senate considers and passes S. 1215.
- 18 May, 14 June 1978: Hearings before the House Subcommittee on Postsecondary Education of the Committee on Education and Labor (House Hearings, 1978).
- 11 September 1978: House Report on H.R. 9158 (House Report, 1978).
- 26 September 1978: House considers and passes H.R. 9158. Passage is vacated while amended S. 1215 is passed in lieu.
- 3 October 1978. Senate concurs in House amendment.
- 17 October 1978. P.L. 95-471 signed by President Carter (Comp. Pres. Doc., 14, No. 41).
- 15 December 1979: S. 1855, amending TCCCAA, reported by Senator Melcher (Senate Report, 1979).
- 25 January 1980: S. 1855 passed by Senate; referred to House Committee on Education and Labor.
- June 1980. First tribal colleges receive TCCCAA operating funds.
- 10 June 1980. Hearing before Senate Select Committee on Indian Affairs (Senate Hearing, 1980).

Public Law 95-471
95th Congress

An Act

To provide for grants to tribally controlled community colleges, and for other purposes.

Oct. 17, 1978
[S. 1215]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Tribally Controlled Community College Assistance Act of 1978".

Tribally Controlled Community College Assistance Act of 1978.
25 USC 1801 note.

DEFINITIONS

25 USC 1801.

(1) "Indian" means a person who is a member of an Indian tribe and is eligible to receive services from the Secretary of the Interior;

(2) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) "Secretary", unless otherwise designated, means the Secretary of the Interior;

(4) "tribally controlled community college" means an institution of higher education which is formally controlled, or has been formally sanctioned, or chartered, by the governing body of an Indian tribe or tribes, except that no more than one such institution shall be recognized with respect to any such tribe;

(5) "institution of higher education" means an institution of higher education as defined by section 1201(a) of the Higher Education Act of 1965, except that clause (2) of such section shall not be applicable; 20 USC 1141.

(6) "national Indian organization" means an organization which the Secretary finds is nationally based, represents a substantial Indian constituency, and has expertise in the field of Indian education; and

(7) "full-time equivalent Indian student" means the number of Indians enrolled full-time, and the full-time equivalent of the number of Indians enrolled part-time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by twelve) in each tribally controlled community college, calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term.

TITLE I—TRIBALLY CONTROLLED COMMUNITY COLLEGES

PURPOSE

SEC. 101. It is the purpose of this title to provide grants for the operation and improvement of tribally controlled community colleges to insure continued and expanded educational opportunities for Indian students. 25 USC 1802.

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GRANTS TO TRIBALLY CONTROLLED COMMUNITY COLLEGES

SEC. 106. (a) Grants shall be made under this title only in response to applications by tribally controlled community colleges. Such applications shall be submitted at such time, in such manner, and will contain or be accompanied by such information as the Secretary may reasonably require pursuant to regulations. The Secretary shall not consider any grant application unless a feasibility study has been conducted under section 105 and it has been found that the applying community college will service a reasonable student population. 25 USC 1807.

(b) The Secretary shall consult with the Assistant Secretary of Education of the Department of Health, Education, and Welfare to determine the reasonable number of students required to support a tribally controlled community college. Consideration shall be given to such factors as tribal and cultural differences, isolation, the presence of alternate education sources, and proposed curriculum.

(c) Priority in grants shall be given to institutions which are operating on the date of enactment of this Act and which have a history of service to the Indian people. In the first year for which funds are appropriated to carry out this section, the number of grants shall be limited to not less than eight nor more than fifteen.

(d) In making grants pursuant to this section, the Secretary shall, to the extent practicable, consult with national Indian organizations and with tribal governments chartering the institutions being considered.

(e) The Secretary shall report to Congress on January 15 of each year the current status of tribally controlled community colleges and his recommendations for needed action. Report to Congress.

AMOUNT OF GRANTS

SEC. 107. (a) Except as provided in section 110, the Secretary shall, for each academic year, grant to each tribally controlled community college having an application approved by him, an amount equal to $4,000 for each full-time equivalent Indian student in attendance at such college during such academic year, as determined by the Secretary in accordance with such regulations as he may prescribe, except that no grant shall exceed the total annual cost of the education program provided by such college. 25 USC 1808.

(b) The Secretary shall make payments, pursuant to grants under this title, in advance installments of not less than 40 per centum of the funds available for allotment, based on anticipated or actual numbers of full-time equivalent Indian students or such other factors as determined by the Secretary. Adjustments for overpayments and underpayments shall be applied to the remainder of such funds and such remainder shall be delivered no later than July 1 of each year.

(c)(1) Each institution receiving payments under this title shall annually provide to the Secretary an accurate and detailed accounting of its operating and maintenance expenses and such other information concerning costs as the Secretary may request.

(2) The Secretary shall, in consultation with the National Center for Education Statistics, establish a data collection system for the purpose of obtaining accurate information with respect to the needs and costs of operation and maintenance of tribally controlled community colleges. The Secretary shall report annually to the Congress on such needs. Report to Congress.

GRANTS AUTHORIZED

25 USC 1803.

SEC. 102. (a) The Secretary is authorized to make grants pursuant to this title to tribally controlled community colleges to aid in the post-secondary education of Indian students.

(b) Grants made pursuant to this title shall go into the general operating funds of the institution to defray the expense of activities related to education programs for Indian students. Funds provided pursuant to this title shall not be used in connection with religious worship or sectarian instruction.

ELIGIBLE GRANT RECIPIENTS

25 USC 1804.

SEC. 103. To be eligible for assistance under this title, a tribally controlled community college must be one which—

(1) is governed by a board of directors or board of trustees a majority of which are Indians;

(2) demonstrates adherence to stated goals, a philosophy, or a plan of operation which is directed to meet the needs of Indians; and

(3) if in operation for more than one year, has students a majority of whom are Indians.

TECHNICAL ASSISTANCE CONTRACTS

25 USC 1805.

SEC. 104. The Secretary shall provide, upon request, technical assistance to tribally controlled community colleges either directly or through contract. In the awarding of contracts for technical assistance, preference shall be given to an organization designated by the tribally controlled community college to be assisted. No authority to enter into contracts provided by this section shall be effective except to the extent authorized in advance by appropriations Acts.

FEASIBILITY STUDIES

Agreement.
25 USC 1806.

SEC. 105. (a) The Secretary is authorized to enter into an agreement with the Assistant Secretary of Education of the Department of Health, Education, and Welfare to assist the Bureau of Indian Affairs in developing plans, procedures, and criteria for conducting the feasibility studies required by this section. Such agreement shall provide for continuing technical assistance in the conduct of such studies.

Feasibility study.

(b) The Secretary, within thirty days after a request by any Indian tribe, shall initiate a feasibility study to determine whether there is justification to encourage and maintain a tribally controlled community college, and, upon a positive determination, shall aid in the preparation of grant applications and related budgets which will insure successful operation of such an institution.

(c) Funds to carry out the purposes of this section for any fiscal year may be drawn from either—

(1) general administrative appropriations to the Secretary made after the date of enactment of this Act for such fiscal year; or

(2) not more than 10 per centum of the funds appropriated to carry out section 106 for such fiscal year.

EFFECT ON OTHER PROGRAMS

25 USC 1809.

SEC. 108. Except as specifically provided in this title, eligibility for assistance under this title shall not, by itself, preclude the eligibility of any tribally controlled college to receive Federal financial assistance under any program authorized under the Higher Education Act of 1965 or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.

20 USC 1001 *et seq.*

APPROPRIATIONS AUTHORIZED

25 USC 1810.

SEC. 109. (a) (1) There are authorized to be appropriated, for carrying out section 106, $25,000,000 for each of the fiscal years beginning October 1, 1979, and October 1, 1980, and $30,000,000 for the fiscal year beginning October 1, 1981.

(2) There are authorized to be appropriated $3,200,000 for each of such three fiscal years, for the provision of technical assistance pursuant to section 104.

(b) Unless otherwise provided in appropriations Acts, funds appropriated pursuant to this section shall remain available until expended.

(c) Nothing in this title shall be deemed to authorize appropriations for the fiscal year beginning October 1, 1978.

GRANT ADJUSTMENTS

25 USC 1811.

SEC. 110. (a) If the sums appropriated for any fiscal year for grants under this title are not sufficient to pay in full the total amounts which approved grant applicants are eligible to receive under this title for that fiscal year, the amounts which such applicants are eligible to receive under this title for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for the same fiscal year, such reduced amounts shall be increased on the same basis as they were reduced. Sums appropriated in excess of the amount necessary to pay in full such total eligible amounts shall be allocated by ratably increasing such total eligible amounts.

(b) In any fiscal year in which the amounts for which grant recipients are eligible to receive have been reduced under the first sentence of subsection (a) of this section, and in which additional funds have not been made available to pay in full the total of such amounts under the second sentence of such subsection, each grantee shall report to the Secretary any unused portion of received funds ninety days prior to the grant expiration date. The amounts so reported by any grant recipient shall be made available for reallocation to eligible grantees on a basis proportionate to the amount which is unfunded as a result of the ratable reduction, but no grant recipient shall receive, as a result of such reallocation, more than the amount provided for under section 106(a) of this title.

REPORT ON CURRENT FACILITIES

Report to Congress.
25 USC 1812.

SEC. 111. The Secretary shall, not later than ninety days after the date of enactment of this Act, prepare and submit a report to the Congress containing a survey of existing and planned physical facilities of tribally controlled community colleges, including in his report a survey of Bureau of Indian Affairs existing and planned facilities which may be used for tribally controlled community colleges without disruption of current Bureau programs.

STUDY OF FACILITIES NEEDS

SEC. 112. The Secretary shall conduct a detailed survey and study of the academic facilities needs of tribally controlled community colleges and shall report to the Congress not later than November 1, 1979, the results of such survey and study. Such report shall include any recommendations or views submitted by the governing body of any such college and by the governing body of the tribe, and shall include detailed recommendations by the Secretary as to the number, type, and cost of academic facilities which are required, ranking each such required facility by relative need. 25 USC 1813.

MISCELLANEOUS PROVISIONS

SEC. 113. (a) The Navajo Tribe shall not be eligible to participate under the provisions of this title. 25 USC 1814.

(b)(1) The Secretary shall not provide any funds to any institution which denies admission to any Indian student because such individual is not a member of a specific Indian tribe, or which denies admission to any Indian student because such individual is a member of a specific tribe.

(2) The Secretary shall take steps to recover any unexpended and unobligated funds provided under this title held by an institution determined to be in violation of paragraph (1).

RULES AND REGULATIONS

SEC. 114. (a) Within four months from the date of enactment of this Act, the Secretary shall, to the extent practicable, consult with national Indian organizations to consider and formulate appropriate rules and regulations for the conduct of the grant program established by this title. 25 USC 1815.

(b) Within six months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties. Publication in Federal Register.

(c) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations for the conduct of the grant program established by this title.

(d) Funds to carry out the purposes of this section may be drawn from general administrative appropriations to the Secretary made after the date of enactment of this Act.